Synopsis of Ph.D Thesis

"Implementation of Legal Services Authorities Act, 1987: An Empirical Study in State of Himachal Pradesh"

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INTRODUCTION

The access to justice, has over the years, been a privileged right of few due to various reasons like high legal cost, lack of awareness, etc. Providing the poor with the means to access justice, acts as a bridge to mitigate the gap of socio-economic inequality. Therefore, to fulfill the ideas of democracy, it is imperative to provide equal access to justice to all. This is enshrined in the Preamble of our Constitution. The principle of equality before law is embedded in our Constitution which is the guiding light towards attainment of the goal of providing justice to all. The means to provide justice is through various tools like free legal aid, legal literacy camps, lok adalats, social action litigation to name a few.

Legal Aid also help in fulfilling the constitutional goal set up by every modern constitution wherein equal laws or equality before law is guaranteed and this can only be ensured by means of the providing the equal opportunities for availing the benefits of such laws. By providing legal aid to the poorest of poor, we pull these people to the level of a democratic living which further strengthens our democracy.

When citizens particularly marginalized or underprivileged groups know what the law has to offer them, they can recognise and challenge injustices much more forcefully. The first step towards that knowledge of the law, which can transform people's lives, is legal literacy. Legal literacy camps are organized to sensitize and create awareness amongst people especially the poor and downtrodden about their rights, duties and obligations. Legal awareness helps to promote consciousness of legal culture, participation in the formation of laws and the rule of law. These camps in a way, bring in a sense of security to these people who otherwise feel abandoned due to their economic and social status. The camps ensure that the legal literacy is spread amongst the masses as it acts as a means to uplift them.

The administration of justice is adversely affected by the delay, corruption, expensive litigation, non access, less number of courts, judges and official staff, lengthy process and lack of legal aid and legal awareness to the needy, deny justice. Therefore, to overcome this problem, *'lok adalats'* or people's court are organized for speedy disposal of justice. The introduction of

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lok adalats in our country is a welcome step in the justice delivery system and its acts as an supplementary platform by giving an opportunity to the erring parties to settle their disputes by way of conciliation.

Therefore, to give a statutory effect to these legal assistance programs uniformly throughout the country, Legal Services Authorities Act, 1987 was enacted. Legal Services Authorities Act 1987 was enacted to constitute Legal Services Authorities for providing free and competent legal services to weaker sections of the society to ensure that opportunities for securing justice were not denied to any citizen by reason of economic or other disabilities and to organize Lok Adalat to ensure that the operation of the legal system promoted justice on a basis of equal opportunity. Legal Services Authorities Act was enacted to give a statutory base to legal aid programmes throughout the country on a uniform pattern. This Act was finally enforced on 9th of November, 1995 after certain amendments were introduced therein by the Amendment Act of 1994. Hon. Mr. Justice R.N. Mishra the then Chief Justice of India played a key role in the enforcement of the Act.

- **Historical background of Legal Services Authorities Act, 1987**

Article 39A of the Constitution of India provides that State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability. Articles 14 and 22(1) also make it obligatory for the State to ensure equality before law and a legal system which promotes justice on a basis of equal opportunity to all. Legal aid strives to ensure that constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and weaker sections of the society.

The earliest Legal Aid movement appears to be of the year 1851 when some enactment was introduced in France for providing legal assistance to the indigent. In Britain, the history of the organised efforts on the part of the State to provide legal services to the poor and needy dates back to 1944, when Lord Chancellor, Viscount Simon appointed Rushcliffe Committee to enquire about the facilities existing in England and Wales for giving legal advice to the poor and

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to make recommendations as appear to be desirable for ensuring that persons in need of legal advice are provided the same by the State. Since 1952, the Government of India also started addressing to the question of legal aid for the poor in various conferences of Law Ministers and Law Commissions. In 1960, some guidelines were drawn by the Govt. for legal aid schemes.

In different states legal aid schemes were floated through Legal Aid Boards, Societies and Law Departments. In 1980, a Committee at the national level was constituted to oversee and supervise legal aid programmes throughout the country under the Chairmanship of Hon. Mr. Justice P.N. Bhagwati then a Judge of the Supreme Court of India. This Committee came to be known as CILAS (Committee for Implementing Legal Aid Schemes) and started monitoring legal aid activities throughout the country. Expert committees constituted, from 1950 onwards, to advise governments on providing legal aid to the poor have been unanimous that the formal legal system is unsuited to the needs of the poor. The 1977 report of the committee of Justices Krishna Iyer and P.N. Bhagwati, both of the Supreme Court, drew up a detailed scheme which envisaged public interest litigation (PIL) as a major tool in bringing about both institutional and law reform even while it enabled easy access to the judicial system for the poor. Their report, as those of the previous committees, was ignored. This explained partly the impatience of these two judges, in the post-emergency phase, in making the institution appear responsive to the needs of the population that had stood distanced from it. The two judges played a major role in spearheading the PIL jurisdiction.

The introduction of Lok Adalats added a new chapter to the justice dispensation system of this country and succeeded in providing a supplementary forum to the litigants for conciliatory settlement of their disputes. In 1987 Legal Services Authorities Act was enacted to give a statutory base to legal aid programmes throughout the country on a uniform pattern. This Act was finally enforced on 9th of November, 1995 after certain amendments were introduced therein by the Amendment Act of 1994. Hon. Mr. Justice R.N. Mishra the then Chief Justice of India played a key role in the enforcement of the Act.

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REVIEW OF LITERATURE

A number of studies relating/ pertaining to Legal Services Authorities Act, 1987 have been reviewed over the period. The Secondary source material in the nature of law text books, commentaries, articles in the journals relating to Legal Services Authorities Act, 1987 is referred. Standard text books on legal services, legal aid and public interest lawyering are collected.

Justice P.N Bhagwati is the father of the Legal Aid concept. In his book "Legal Aid as a human right" he recognized legal aid as a human right which is inherent in every human being.

Sangita Dhingra Sehgal in her commentary titled "Commentary on the Legal Services Authorities Act along with Rules, Regulations, Schemes, State Laws and Proformas" delves deep in highlighting several laudable aspects of the Legal Services Authorities Act of which very few citizens are aware about. Laid out section-wise and appended with concise and crisp comments at the end it is meant to enable the reader to grasp the basic nuances of relevant sections. To enhance its utility State-wise Legal Services Authority Rules have been provided so that a person understands the Rules and Guidelines pertaining to his domicile.

Justice V.R.Krishna Iyer, in his book "Justice at Cross Roads" discussed about the concept of social justice and points state duty to execute the promise of justice as in the preamble in favour of the people.

Dr.Upendra Baxi, "Law and Poverty critical essay" is compilation of different Author's presenting topics on law and poverty.

S.Muralidhar, in his book "Law Poverty and Legal Aid Access to criminal justice" explained right to equal access to criminal justice and Legal Aid provisions in criminal justice and legal aid provisions in criminal justice system. The book explains interaction between the criminal justice system and the poor and pleads for a better legal aid system for vagrant's sex workers and mentally challenged person. However, the book is confined to Legal Aid in criminal justice.

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Dr.S.R.Myneni "Public Interest Lawyering, Legal Aid and Para Legal Services" is a book which to a convincing extent covering statutory provision of legal services provided by authorities. This work failed to explain the implementation of schemes by Authorities. Legal Aid provided by the Governmental Agencies was not covered.

Sandeep Bhalla in his commentary named "Commentary on Legal Services Authorities Act, 1987 Legal Services Authorities Act aims to constitute Legal Services authorities to provide free and competent legal Service to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organise Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity. This Work is a legal commentary on the working of the Act.

Dr.N.V.Paranjapee in his book on "Public Interest Litigation Legal Aid & Services, Lok Adalats & Para-Legal Services" described role of public interest litigation in protection of life and liberty of persons and for the protection of the rights of women, child in detail. Legal Aid as Human right was explained and also at international perspective .The provisions of Legal Aid was analyzed. Role of Para- Legal Services in Legal Education with specific reference in other countries were elaborated. The researcher felt that earlier studies did not cover all the aspects on this problem in a comprehensive way.

Dr.Kailash Rai in his book on "Public Interest Lawyering, Legal Aid and Par Legal Services" explained public interest litigation elaborately. The author analyses the powers of the Legal Services Authorities as per laid down under the Act.

N.R.Madhava Menon, in his article "Legal Aid and Justice for the poor" has explained poverty, historical perspective of Legal Aid in India elaborately and need for publicity and promotion of Legal Aid Schemes by Para Legal Services.

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Hrudaya Balla Das, in his article "Legal Aid, Rule of Law and social justice" explained about rule of law, rule of equality, object of legal services authority, the right to have a counsel referring to case laws, ADR Techniques to resolve the disputes amicably were discussed. The presentation of the author was not descriptive of legal services authority act and various schemes under the Act.

Dr.B.R.Sharma, in his article "Justice At the door steps of the poor; some reflections on India Legal aid Programme" discussed the purview of legal aid programmes implemented by Central Govt. and State govt. The author expressed the necessity of preventive legal aid through promotion of legal literacy, Lok Adalts, legal aid clinics, para-legal services.

OBJECTIVES OF THE STUDY

Legal Services Authorities Act, 1987 is a legislation that has given effect to Article 39A of the Constitution of India. The researcher intends to study the implementation mechanism of this law. The researcher also intends to emphasise upon the utility of this law in the present scenario. Therefore, the researcher will proceed in the proposed research keeping following objectives in mind:

1. To study the theoretical perspective of the meaning, origin, need, advantages and the disadvantages of the legal aids in India.
2. To study the effectiveness of Legal Services Authorities Act, 1987.
3. To observe the implementation mechanism of the Legal Services Authorities Act, 1987.
4. To evaluate judicial process.
5. To suggest measures to make Legal Services Authorities Act, 1987 more effective.

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STATEMENT OF THE RESEARCH PROBLEM

In India, legal system is not equally accessible to all. High cost of justice prevents the poor man from making use of the machinery of justice, for vindication of his rights or redressal of his grievances. Consequently, the poor and weaker section of the society continue to suffer speechlessly and have no alternative but to bear with injustice because they cannot pay the price of justice within the frame work of the judicial administration. The result is that the poor people are not able to secure the protection of laws. This results in losing faith in democracy and the rule of law and they get convinced that the legal system is intended to benefit the rich at the cost of the poor and disadvantaged if the poor cannot get equality before the law and equal protection of laws as enshrined in Constitution of India. This trend will certainly pose danger to the rule of law and grave threat to constitutional democracy. Therefore, the right to legal aid as an essential part of administration of justice is designed to protect the individual rights and also simultaneously meet the demand for social justice by protecting the new social rights of citizens, to ensure them economic and social equality.

Keeping this in mind, the researcher's focus will be upon the following questions during the research period:

- To analyze whether the existing laws and policies with regard to tools of legal aid are adequate or properly implemented
- To study Legal Services Authorities Act, 1987
- To find out the implementation of Legal Services Authorities Act, 1987
- To look into whether Legal Services Authorities Act, 1987 is able to fix growing challenges effectively
- To examine the judiciary in resolving disputes effective
- To study the trend set out by Indian judiciary while interpreting the existing laws for the welfare of the policyholders

Thus, the research shall take a look at the existing laws/ policy/ schemes/ rules on legal aid and their enforcement. Also, the study shall touch upon the international instruments in making the legal aid a dual help, both for mass welfare and policy matter for the economy. The research

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shall cover the historical background, nature and kinds of legal aid, legislative impact and enforcement of Legal Services Authorities Act, 1987.

HYPOTHESES

The study shall proceed with the hypothesis that the laws are not adequately enforced. Lack of awareness and also deliberately turning blind eye towards the plight of poor and downtrodden is alarming. The failure to provide easy and quick access to justice breaks the democracy and adversely impacts the development of nation.

The study proceeds with the following research questions:

i. Whether the existing laws are implemented?
ii. What have been the measures adopted by the Government of India to create awareness amongst the citizens of country?
iii. How did the judiciary react to the passing of Legal Services Authorities Act, 1987 and what steps did it suggest to maintain balance in the society?

RESEARCH METHODOLOGY

The proposed research will be partly theoretical and partly empirical. The theoretical part of this research will use deductive method through content analysis of the relevant literature, the inference can be drawn. This will be methodology incorporated in the four chapters in which a detailed analysis of the theoretical aspects will be dealt with whereas the remaining part of the research will imply inductive methodology where research starts in the empirical areas and tries to generate theories and certain principles. In reference to the theoretical research the study will be based upon secondary data which has been collected from annual reports and the text and references books available on the subject. The method of research to be used in the proposed study is analytical, comparative and critical. Secondary sources of information will be resorted to for completion of the study. Statutes like Legal Services Authorities Act, 1987 and the other acts for implementation of legal assistance in India will be consulted. The available literature/books commentaries will be critically studied and referred to thoroughly. Appropriate places relevant

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foreign judgments and case laws shall also form the subject matter of the study. The articles published in various journals relating to legal aid shall also be referred to.

a. Universe and Sample of the Present Sudy

The Universe of the present research is state of Himachal Pradesh. There are 12 districts out of which district Shimla has been picked up for conducting the entire empirical research.

b. Research Tools

The researcher has opted for the following research tools:

i. Observation method
ii. Interview/ schedule/ unstructured and semi structured questionnaire.

c. Data Analysis

After collecting data, the researcher will analyze it and decode by using pie charts and graphs inserted at relevant parts of the chapters. The collected data will be processed by coding, scoring and tabulation.

CHAPTERISATION SCHEME

Chapter 1: Introduction

Chapter 2: Historical Development of concept of Legal services.

Chapter 3: Constitutional and legislative Provisions in India

Chapter 4: Judicial Contribution in development of concept of Free Legal services

Chapter 5: Empirical study of ~~Shimla District~~ State of Himachal Pradesh

Chapter 6: Conclusions and Suggestions

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